Indian Succession Laws

Report to the Holy Episcopal Synod.

(Dr.Paulos Mar Gregorios)

In response to the Holy Synod's directive to submit a report on the state of Christian Personal Law, on the need if any for reform, and about possible actions by the Synod in relation to the same, I wish to make the following submission.

I Preliminary Remarks

There are two kinds of personal laws involved here- namely sucession acts on the one hand, and dowry, marriage and divorce acts on the other.

The first point to be made is that no special theological or Christian issues exist which demand a special succession act for Christians, while there may be circumstances which call for a special marriage and divorce act. Some Christians- i.e. Roman Catholics and Orthodox, regard marriage as a sacrament and divorce as subject to religious law. This distinction between succession acts and marriage and divorce laws should be held in mind. It may not be possible to have a Christian Consensus on marriage and divorce laws at present. A Consensus, on the other hand, on Christian Succession laws and the principles that should govern them seems quite possible. This report shall therefore mainly confine itself to Christian Succession Laws.

Some further points need to be made, on the general situation of law in our country.

a) Most of our personal laws were formulated in pre-independence days by the British. They refer to the social conditions of the 19th and early 20th centuries and should be looked at again in the light of present conditions.

b) In principle, it will be better if all Christian personsal laws in India are uniform. If one law fit the whole of India, separate regional laws like the Travancore and Cochin Succession Acts need not remain on the books.

c) In principle, it would be desirable to have a uniform Civil Code for all Indian citizens, without discrimination on the basis of religion, sex or caste. In view of the fact, however, that the state though secular, is interested in defending and supporting the minorities, may be justified in enacting separate laws for the minority religious groups.

Of course to have separate laws for minority groups entails having a separate laws for the majority group. We are still in a time when Muslims and Christians have conceptions of marriage and divorce, different from each other and from that of the Hindus, Sikhs, Buddhists Jains etc. The extent to which a secular state should legislate to protect or support the implementation of these religious requirements remains doubtful and need to be debated. Normally it should be the responsibility of the religious organisation to enforce its own laws and canonical requirements. There is something incongruous in a secular state permitting the law courts to be party to the implementation of sectarian religious laws. But at the present time we are unable to enforce a consistent secular system in our country. And therefore the Synod may express its opinion, supporting in principle the idea of a uniform civil code for all citizens, and then going on to say that in our present state where minority communities still need protection, there may be some justification for maintaining separate succession, marriage and divorce laws for the minority communties.

d) It isa different issue whether we need separate laws for Syrian Christian over against other christians in India. The Syrian Christians, as an ethnic groups are today divided into several distinct religious organisations:
e.g.

a) the Malabar Rite Roman Catholics
b) the Malankara Orthodox Church
c) the Mar Thoma Syrian Church
d) the Malankara Rite Roman Catholics
e) some Syrian Christians in the Church of South India
f) some Syrian Christians among Latin Rite Roman Catholics
g) some Syrian Christians among the St.Thomas Evangelical Church
h) The Church of The East (Trichur)
i) The Thozhiyoor Independent Church
j) Syrian Christians among several Evangelical sects, Panticostals, Plymouth Brethern, etc

It is not possible to enact a law that can be properly implemented, which applies to such - diverse group. It should be clearly and repeatedly stated that the Succession Act refers, only to inheritence of intestate deaths-that is parents who die without leaving a proper last will and testament.

The law cannot say anything if a parent leaves all his property to one favourite daughter and leaves his widow, mother, sons and other daughters totally penniless. The succession act has no validity where there is a proper will. The problem of justice in inheritance practices cannot be dealt with by law as it now stands.

Historical Background

The Travancore Christian Succession Act, (Regulation IIof 1092) has a particular background. It was passed by the Maharaja of Travancore on 21st December 1916 (7th Dhanu 1092). The background is given in detail in a document(24 pages) printed at the CMS Press, Kottayam in 1917, i.e. a few months after the passing of the bill.

1. Travancore government appointed a "christian Committe" in 1911 to study legislation questions of special importance. The Committee fails to come to an agreement and submitted a majority report and dissenting minutes in June 1912. The report and a draft bill were published in the gazette (English, Malayalam and Tamil). Three months later Draft bill without any modification was introduced into the Trvancore legislature in June 1913. The legislature approved the principle of the Bill and gave it to a select committeeconsisting of the following:

1.Mr.N.Krishnan Nair(Late Dewan of Travancore)

2.Mr.A.J.Vieyra

3.Mr.Kuruvilla Varki

4.Mr.C.P.Thomas

5.Dr.Poonen.

Mr.Krishnan Nair, onbecoming Dewan, and Dr.Poonen on retirement from government service, left the legislature and therefore the select committee. In their place, John Kurien(Executive Engineer and nominated member, replacing Dr.Poonan) and Mr.K.Parameswaran Pillai were appointed.

The select committee, on which all the Christian members of the legislature served, had to meet the objection to the bill from various quarters. Two objection were in regard to a widow's right to her father's property, and the right of a mother to her deceased son's property- both only in case of intestate (i.e.no proper will) deaths. So theselect committee added provisions that the widow daughter or wife if she remarries would forfeit her right and that the mother would have title to the property only during her life time. This was also published in the gazette in 1915. Second reading of bill was held and the report of the select committee was discussed by the legislature in 1916.

Mr.Kuruvilla Varki and C.P.Thomas were then replaced by Mr.I.C. Chacko and Paul Daniel. Bill was unanimously passed in December 1916.

In the discussion in the Christian Community at that time the main point were (always in case of intestate deaths:

How to ensure that the unmarried daughter, wife(Widow), and widowed mother would be protected and provided for .

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One issue was whether the Streedhanom of an unmarried daughter of the deceased should be defined by law or left to the discretion of her brothers.

Another question was about property inherited from the mother of the deceased, whether it should go back to the maternal relatives, or be treated like all other property.

It was generally agreed that the widower should have the same rights in the deceased wife's property as the widow should have in the deceased husband's property.

There was strong opposition to the bill, and many meeting were held in Travancore to denounce the bill. The young people of an churches as well as the wealthy opposed it. No meetings were held to support it. Malankara Sabha Tharaka supported it, but all the newspapers opposed it. Several deputations were sent Trivandrum to oppose it. Its only supporters among the Syrian Christians were a few highly educated Senior Christians, the lay leaders of the Syrian Community. They submitted some memorials to government to support it. At the third session of the "Travancore and Cochin Christian Congress" the president expressed support for the bill.

The opponents of the bill called themselves " Conservatives" and dubbed its supporters as "reforms". One reason for this was that Mathews Mar Athanarius had a great deal to do with the formulation of what constituted the customary law of the Syrian Christian on which the succession act was supposedly based

Some matters of principle were
(a) is a widow, with or without children, entitled to a share inthe deceased husband's property?

(b) If the widow is remarried would she lose her title to that property.

It is interesting to note that an the christian committee which studied the draft bill, there were four Syrian Christians- are Catholic, One Orthodox, One Mar Thoma and an Anglican. The Latin Christians had two representatives, and the non-Syrian Protestants are.

It is also interesting that Mr.K.C.Mammen Mapillai was among those who first opposed the Bill, but admitted that other who opposed it were doing so " Without any deep thought or correct comprehension" The Manorama came around to support the bill.

The Bishops were generally opposed to the bill including Titus Mar Thoma, anour Mar Dionysius, Mar Ivanios, Mar Koorilos, Bishop Makkil of the Roman Catholic church first opposed it, then came around to support it. His successor, Bishop Alexander chulaparambil always supported the bill . Bishop Aloysius of Ernakulam took exception only to one or two points in the bill, and wanted the bill to be amended rather than dropped. The Manorama point of view was similar.

One point is important. The Bishops did not want the court of law to decide on how much dowry should be paid for an unmarried daughter of the deceased at the time of her marriage. This should be decided by the family of the girl in negotiation with the family of the boy - not by court decision. But Mammen Mapillai was of the opposite view- namely that it is possible that the brothers who inherit their father's property should squander away the paternal property and also out of illwill or by permasian of their wives deny a proper dowry to a sister.

Mr.Kuruvilla Varkey, who was a member of the select Committee, produced an alternative bill and circulated it among the Bishopes. This alternative bill had " sincere approval and support" of Mar Dionysius and Mar Philoxendous , as will as Mar gregorious, Mar Joachim Ivanious and Mar Paulose Athanasius.

There were no major issues at debate. Opposition and support came from often uniformed perceptions and unexpressed attitudes like refo versus anti-reform etc. Whether the wife (Widow) as well as mother of th diseased should get a share was one question. The other was about the unmarried daughter for whom no dowry had been paid.

IV More Recent History

After the formation of the Kerala State, a new anomaly has come to the surface- namely that the Travancore and Cochin succession acts do not apply to what was formerly the Malabar district, where the Indian Christian succession Act is in force.

The Kerala Law commission took up the matter in its meeting of 21st August 1967, and co-opted christian Joseph Vithayathil as adhoc member of the commission. A questionnaire was issued to the public. Evidence from the public (163 persons) was gathered. There were discussed by the commission on 9th December 1967. A revised bill was drafted by the commission (6th January, 7th January and 3rd Febuary 1968). A Report was also prepared and submitted to the Kerala government (15th February 1968).

Meanwhile the Indian Christian Succession Act (Act 39 of 1925) was adopted in the Part B state of Travancore Cochin, with the adoption of the Christian of India in 1950. By provision of section 29 (2) of the Indian succession Act (1925) and section 6 of the Part B states (Laws) Act of 1951, the Indian christian succession Act should have become the law of Travancore Cochin also, abrogating the Travancore Succession Act. But the High Court of cochin in the case of Kurien Augusthy V Devassey Aley (Indian Law Report 1956 T.C. 1078. A.I.R.1957.T.C.I) held that the Travancore Christian Succession Act would stand. So both the Christian succession Act of Travancore and the Cochin christian Succession Act continue in force in the respective areas.

Thus there are three christian succession acts in the state; the Tamil christian of Chittur Taluk are however governed by Hindu Law.

The Report of the Law Commissionargued for the unification of these Acts, especially in view of marriages between christian in the three regions. Should one be governed by the law of his mother's region or father's region? What about christians owning property in more than one region? Different laws will govern the inheritance of his different properties. Syrian christian settlers in Malabar will be governed by Travancore or Cochin law, depending on the region of their birth, or by Indian succession Act, depending on the place where he dies or has property?

The Report also said that a Uniform christian Succession Act may be a step towards a uniform civil code. These are the words of the Law Commission Report:

" The Kerala government itself would appear to have realised the nee for a uniform law relating to intestate succession among christians and in 1958 introduced" The christian succession Acts(Repeal) bill, 1958" seeking to make the central Act govern succession among all christians in Kerala. The Bill appears to have lapsed.

" The commission therefore considers it necessary that the law governing intestate succession among christians should be uniform and that it should apply to all the christians without any exception"
(p.12)

The Report also says that "The Travancore and Cochin Acts treat female heirs differently from male heirs" and that " this does not seem to be consistent with the principle underlying Article 15 of the constitution which says that there shall be no discrimination on the ground of sex alone"
(p.17)

It should be noted that the law commission report had a dissenting note attached from Joseph Vithayathil and Dr.A.T.Markose.

V Sex Discrimination

1. There is a difference between the Travancore Act and the Cochin Act. Under the Travancore Act, the widow gets an equal share with the son. Under the Cochin Act she would get only 2/3 of the share of a son. Under the central Act, however, the widow would get 1/3 of the total estate of the deceased husband. Many people think that the Travancore Act is more fair, and if the Indian succession Act is adopted, the provision about 1/3 of the total for the widow should be changed to equal share with a son or daughter.

2. The father and mother of the deceased are not treated alike. There is provision now only for the mother getting a share. Some people including the Law Commission Report think that the father and mother should be treated alike. I believe this is debatable.

3. The question whether the daughter who has received a share of the property at the time of her marriage, either in cash or kind, should have the same share as the son who has not received such property, has lost its relevance with the Dowry Prohibition Act, which is now to be very strictly enforced.

There is at the moment the hope that if the Indian succession Act with suitable amendments is enforced, there will be less of an incentive for dowry. The crucial question is whether if we abolish dowry altogether, as we have to do, then the bride would inherit any share of her father's property only at the time of the father's death. This is so also for sons. On the surface this seems legitimate and equitable.

The problem, however, arises from the fact that the law can guarantee the daughter or son a share of the father's property only in the case of intestate death.

If a father writes a will dividing his property among the sons, and not leaving any, or less than the son's share, to the daughters, the law has no provision to enforce justice.

The fear is that, since the married daughter would have become part of another family, the father may be tempted to leave a lesser sha or no share to the daughter by will. The argument for dowry or transfe of part of parental property to the daughter at the time of marriage, i based on the theory that the time before or at marriage when the daughter is still a member of the parent's family is the best time psychologically to make the parents give part of their property to the daughter.

Dowry has certainly become a social problem, a burden which falls more heavily on the middle and lower income groups than on the upper classes.

The argument that dowry system prevents the fragmentation of land holdings does not have as much relevance in Kerala today as it had some time ago. Agricultural land is not always involved in parental property and there are other ways of avoiding fragmentation without having recourse to the dowry system. Besides, it is discriminatory to allow partition among sons and disallow it among daughters.

It is for this reason that the law commission report and Draft Bill did not include a provision that if parents give money during their life-time to a son or daughter as advance against his or her share of property and execute a document to that effect, then this advance would be deducted from than son's or daughter's share at the time of intestate death. They felt this would perpetuate the dowry system.

The Disenting Note of Joseph Vithayathil and A.T.Markose, however, demands provision for such an advance. Their argument is that if such property is given as part of the share of the son or daughter in ancestral property, this would not amount to dowry. They even argue that "Streedhanom" is not dowry. The main thrust of the dissenting minute is to justify streedhnom. It is also based on the doubtful premise that " the syrian christians and the South Travancore Christians are chiefly agricultural communities".

Their demands is the addition of a phrase to claim 24, which say.

" Provided, however, that any money or property given to the child by the intestate during his life time in partial satisfaction of the child's claim against his estate shall be taken into account in estimating the distributive share of the chil in his property".

This issue will need some discussion. If the Vithayathil Markose proposal is accepted the dowry system would be perpetuated. If the Law Commission's proposal is accepted the dowry system will have little incentive to continue.

It will have to be recognized that the present system of giving money to a daughter on the occasion of her marriage would be unfair if she is later to receive also an equal share with her brothers in the parental property.

One solution to this would be to give such pocket money on an equal basis to sons as well as daughters. This would not require any legal provision but would be a wise decision on the part of parents. The net result may be that the "Pocket money" will become less than what it do now.

VI Conclusion and Recommendations

It is clear that the repeal of the Travancore and Cochin Succession Acts and their replacement in Keral by the Indian Christian Succession Act with suitable amendments will eliminate many anomalies.

The maximum amount of Rs.5000/- fixed as the share or "Streedhanom" due to a daughter (Travancore Act section 28) was fixed at a time when money had a much higher purchasing power and should not be retained on the statute books.

The dowry system is an unnecessary burden or middle and lower income families with daughters to be married off. It may have the positive advantages of helping to reduce land framentation and helping the new couple start off with some capital, its negative consequences, outweigh these positive advantages. Traditionally a share of the dowry (Patharam or Pasaram) went to the bride's parish church. These amounts now-a days do not always bear a fixed percentage relationship to the " Pocket money" amount. The church now gets an arbitrarily fixed s and there is no harm in such a sum being paid to the church even where there is no "Pocket money".

In any case it is high time that the parish churches came to new ways of sustaining themselves without depending on an out-lawed dowry system.

In view of these facts, it is recommended that a letter along the lin of the enclosed draft go to the chief minister and the Law Minister of Kerala with copy to the Prime Minister in Delhi. A copy of this letter could be circulated also to the heads of other churches in India for information.

Draft Letter

The Hon'ble Chief Minister of Kerala
The Hon'ble Law Minister, Kerala
Trivandrum .

CC 1.The Prime Minister of India
2.The Union Law Minister.

Dear Sirs,

The Holy Episcopal Synod of the Malankara Orthodox Church has reflected on the need to bring some uniformity and current relevance to christian succession laws prevailing in the state of Kerala, where a large number of Malankara Orthodox Christians live. We had before us the relevant documents as well as a report submitted by Dr. Paulos Mar Gregorious, Our Metropolitan of Delhi.

1. We have recognised the fact that there are three different acts governing christian succession in Kerala, and some uniformity in legal provisions in this regard is desireable.

In addition to the technical amendments necessary in the Indian succession Act along the lines proposed by the Kerala Law commission's Report dated 15th February 1968 and its appendings:

" The Kerala christian Succession Bill" draft, we request that the Kerala Act provide for
(a) the inclusion of all Keral christians under the same act;

(b) the amendment of section 33 of the Indian Succession Act (which provides for the widow getting one-third of the husband's property irrespective of the number of children) to make the widow or widower entitled to a an equal share with the sons and daughters, i.e. the share of the widow or widower in an intestate husband's or wife's property should be equal to that of a child.

2. We have recognized that the Travancore and cochin succession acts contain aspects which discriminate against women and thereby violate the constitutional prohibition of discrimination on the ground of sex alone.

3. We have recognized also that the Streedhanam system which has some positive aspects, has now become a burden for the middle and lower income groups and that even if it is different from the dowry system, its perpetuation is not so much to be desired.

We therefore request the Kerala government to introduce legislation for the repeal of the Travancore and Cochin Succession acts, and for promulgating the Indian christian succession Act with some suitable amendments to be made applicable to all christians in the state.

(c) the amendment of the clause in the Indian Succession Act which excludes the mother from a share, in the inheritance of a diseased son's or daughter's property if the Father is living; it

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will be less discriminatory if the Father and the Mother each get an equal share with the sons and daughters.

We hope that you will proceed to take action in this matter in consultation with other christian communities in the [redacted].

Yours Sincerely

Baselios Mar Thoma Mathews-I
Catholicos of the East

Some Philosophical Theological Comments on the Rule of Law in Society

Introduction

The word law used in many senses:

(a) In the physical sciences - a hypothesis put forward by human intelligence in order to bring order into our sense-data, so that we can make "sense" of our experience (e.g. law of gravity, second law of thermodynamics etc)

(b) Law in the Social Sciences - Less precise than (a), but still helping to predict behaviour in the aggregate. Greater degree of freedom in man than in the physio-chemical and physiological sciences - means social sciences become less scientifically precise.

(c) The laws governing special societies - Statutory laws of a corporation, the Canon law of the Church etc

(d) The law as a biblical concept Ha-Torah as a technical notion

(e) Common law or Civil and Criminal laws - Roman-Dutch law, Anglo-Saxon law, Jewish law etc

Blackstone (. .
as both Science and Mystery . . but ought to be known
it as a science

The rational element and the
transcendent or trans-logical element are
always in mutual tension.

The notion of mystery should not, however,
be used to befoul ~~the~~ what is logically clear.

The tendency in both Anglo Saxon
law and Roman-Dutch law to refer the concept of
law itself to the divine will or to Cosmic law.
(natural law)

~~Is the~~ Are there certain fundamental
principles common to all legal systems? If
so on what are they based?

~~Is there~~ a law—

Is St: Paul right in affirming
that " when Gentiles, who have no law, -
do by nature the things of the law, these they
having no law are a law to themselves
in that they show the work of the law written
on their hearts, their conscience bearing witness
therewith"?

Are our laws related to some
ethical absolute? If so, what are they? How
can we recognize these absolute?

Is there any "ideal law" which act
as a norm for "real law" — or is it our
real law' ~~which~~ the criterion by which we can
evaluate the claims of any ~~law~~ legal principle to
be ultimate, transcendent, or ideal?
Locke, Rousseau & Medieval theologians held ideal
as norm for real The new philosophers of the
Laws like Grotius and Wolff held to the
position that positive laws could prohibit what is

— Freedom & Man again.

Among the ancient Roman jurists, that law was natural which dealt with institutions common to man and the animals.

II The Concept of Natural Law and Human Freedom

Some further Considerations

1 General recurrence in all ancient cultures of the notion of Jus divinum and a jus naturale derived from it

2. Jewish speculation that the law was created before "the foundation of the world"

3 The Concept of Rta in Indian thought probably goes back to pre-Vedic times ~~parallel to Greek notions of logos and nomos~~ In Hindu thought men and gods can violate Rta Ancient Hindu religious law (Dharma) both uphold man in the path of rta, and helped restore him when straying

4. In Greek thought Solon of Athens regarded law as superior even to ~~Zeus (God)~~ the Gods The chief God, Zeus was Guardian of the law, but himself subject to it.

Plato developed the notion further.

5. Roman law Cicero says, all men have received the reason and law (Greek logos and nomos, Latin ratio and lex) from nature — And are eternal law is universally

. . . / kind

(6) Augustine introduces the notion of the will in the law comes from the will of God + that law to be accepted by the will of man. God's will is known from the Scriptures, but confirmed by our own natural intuitions.

(7) Thomas Aquinas Great contrast between Augustine + Thomas.

(a) Augustine. If man had not fallen his will would not have been sinful + he would not have needed law

Aquinas. Man is a social animal + needs law even in innocent state

(b) Augustine The State is to restrain evil + should be minimal (law + order state)

Aquinas The State is to promote the common good (Welfare state)

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(8) The role of human freedom formed in dialogue ~~to the~~ expression till the 20th Century. The Puritan fathers of America wanted individual freedom The French revolutionaries wanted liberté - again individual personal freedom.

Marx was one of the first to draw an attention to social freedom

Synopsis ~~and Questions~~

Role of Law as an Instrument of Love and Justice.

(Fr. Paul Verghese)

There we have three fundamental Concepts in the title - Law, Love, Justice and ~~two~~ Secondary Concepts - Role and Instrument.

No clear thinking is possible without clarifying the three fundamental concepts and seeing some of the implications of the two Secondary Concepts.

Let us take the most difficult first Love. This word is notoriously unclear, ~~and~~ Capable of many meanings.

① Pagan Greek Agapao to show means external signs affection and love - like kissing the head, embracing, etc. In the New Testament it means God's compassionate care for humanity, and humanity's active care for each other motivated by God's love

② In Romantic literature Love comes from the Latin root amare from which we get our amour. Amare refers more to pleasure and fondness. In Romantic literature love means the projection of all virtue to the object of one's love, and then to desire with all ardour to possess that object.

Caritas, from which we get English charity. as well as care, more like the care of parents for child. It is an active love, paternalistic, protective providing, and somewhat possessive.

(4) Vulgar use of the word love in much contemporary literature simply means sexual intercourse.

When Christians speak of love as a social reality, they should be careful to avoid certain meanings: especially the Romantic one, where there is a false projection of all good to the object and then intense desire to possess it. This is based on the twin evils of falsehood and acquisitiveness, neither of which are Christian. On the contrary love creates value in the valueless by the giving of oneself.

~~Can Law become the instrument of social love?~~ Paul Tillich gives an ontology of love which equates it with power and justice. "Life is being in actuality and process. Love is the moving power of life. In these two sentences the ontological nature of love is expressed. They say that being is not actual without the love that drives everything that is, towards everything else that is. [illegible] the unity of the separated

If Tillich is right, then the distortion of love occurs when the emphasis falls on the pleasure generated by the union of the separated, rather than on the union itself. Tillich rejects partially Freud's libido theory as the source of all willing to the extent that Freud ~~~~ misunderstands libido as the pleasure principle rather than as the principle of unity-seeking. The striving of libido (when unpreverted) is not to get rid of its tensions, but rather to achieve unity with the other. Thus the final goal of love is the achievement of harmonious union and the resultant joy.

The dialectic between Law and Love seems quite complex. What is Law? It is a prescription enforced by threat and force and fear of punishment. It does not either transform the source-springs of human motivation, nor does it foster creative freedom. Its function is primarily negative — to prevent the misuse of human freedom. To interfere with other people's

freedom. Law,
order or Structure. Law can be
both prescriptive and proscriptive.
In either case it deals only with
external actions, though motivations are
taken into account as mitigating
factors. But the motive to kill somebody
is not culpable before law, until the
action itself has taken place.

Order or Structure, which is
produced by prescriptive or proscriptive
law, can however be seen either
negatively as the limitation of personal
freedom and the protection of personal
freedoms from outside intervention. But
even more positively structure can be
seen as an instrument created by
society as a whole for achieving
certain freely chosen ends. Thus Structure,
and therefore law, can be seen as
instruments of corporate freedom.

Justice

The Greek words dikē, ~~Dikaiosunn~~ dikaiosunē in the New Testament have a pagan as well as a Greek background. In the Old Testament the two most important ~~parallel~~ synonyms for justice are Tsedeq (Tsedaqah) and mishpat. There is a third word which has a similar connotation hesedh, which the old English Bible used to translate as loving kindness, but the RSV translates as steadfast love. In fact its meaning dependable is not far from the idea of love and dependable justice combined.

A major point to be remembered about the Old Testament is that the Jews did not separate the legislative, the judiciary, ~~the legislative~~ and the executive. The rulers or Judges were lawgivers, law adjudicators and law enforcers. The book of Judges, e.g. speaks of people as Judges whose main job seems to have been to fight the enemy and protect the people. This is also justice. In Judges 5:11 Deborah the Judge calls the acts of Yahweh in defeating the enemy "the just acts of Yahweh".

In thinking about justice as a Christian idea, two errors confuse our thinking:

The first is the error which assumes that the task of the Judge is simply to hear both sides of the ~~evidence~~ case, to weigh the evidence, and to give a verdict in relation to certain specific charges made. That is our modern Judge. The Judge in the Old Testament is one who protects the victim of injustice, lifts him up and gives him vindication (justification)

The second error is the Roman idea of justitia. ~~jus~~ to associate justice with jus, the root means that which is due or binding. It also means law. The main idea is that I must get what is due to me by right. The duty of the law is to give to each man what is his due, his right, that which is his, whether reward or punishment or property. This is far from the Biblical understanding of justice.

Tillich again gives an ontology of justice. For him justice is the way in which actualized being (life) unites dynamic with form, - i.e. able to transcend from one form

~~It~~ to another without losing its identity or destroying itself:

The Stoics related the Logos to the Nomos. We in India have a concept of Rta which regulates both celestial movements and the affairs of men. Jus regulates Justitia, both in nature & in society

According to Tillich, Justice is the very form of being - the form in which power (which is ultimately the power of being) actualizes itself in life. Justice is dynamics regulated according to the principle of love. It is choosing the right relation of power between various elements in being. This right relation cannot be permanently codified, but certain basic principles can be enumerated:

> "If life as the actuality of being is essentially the drive towards the reunion of the separated, it follows that the justice of being is the form which is adequate to this movement".

The form must be adequate to the content: ~~The~~ As the content changes the forms need to change. Social change demands

— " Look to perfection

adequate.

The second principle is that of equality. In what sense? Who are equal? ~~Into~~ Pagan societies said only "free men", the master class were equal. Slaves had no rights. Christianity has technically wiped out the diff between free and unfree. All men are equal.

Equal in what? In their potential humanity," as rational human beings - says Tillich. "This potentiality must be actualized if real equality is to be created." (p. 54) In actual societies, equality is never fully realized and has always to be striven for.

Third principle. Personality. Man cannot be treated as a thing or an object, but only as a person, with freedom and dignity. The removal of social conditions that violate the freedom and dignity of persons thus becomes a demand of justice.

Fourth Principle. Love. "If justice is the form of the reunion of the separated, it must include both the separation without which there is no love and the

. . . o - - actualized" (p. 57)

This is where community comes in as a principle of justice.

Aristotle's distinction between retributive justice and distributive justice: This is giving to everything what is its due — negatively and positively. There is an element of arithmetic or calculation here. They are proportional or quantitative considerations.

Tillich calls for an additional kind of justice — the creative or transforming justice. He defines this as "Fulfilment within the unity of universal fulfilment" (p. 65). This is the more important ~~aspect~~ in the Bible — more important than proportionate or tributive justice. It is the ultimate form of reuniting ~~for~~ the separated in love — through grace and forgiveness.

What is the role of power, compulsion or enforcement in justice?

The Combination is Justice - Love, knowledge - wisdom and Power - Freedom. The three together make God who He is and we human beings also have to grow into this power & being.

Law must assist in this process.

What are the positive functions of Law

(a) Law as Teacher of Values
(b) Law as Social Reformer
(c) Law as preserver of ~~Law~~ Order in which all can grow.

But law is only an instrument - not an end in itself. The end is Man.

LAW IN A REVOLUTIONARY AGE

Four Meditations

I. LAW - SCIENCE OR MYSTERY?

(a) Sir William Blackstone's Commentaries on the Laws of England (1765-69) speaks of the Law as both Science and Mystery. Laws have their origin in the will of God, Who "laid down certain immutable laws of human nature, whereby that free will (of man) is in some degree regulated and restrained, and gave him (man) also the faculty of reason to discover the purport of these laws". But because of man's sinful nature, his discovery through reason of God's immutable laws is always imperfect. Yet Reason is the instrument by which we can discover these laws revealed by God; the past revelation is clearly seen in the corpus of common law and this has to be studied by the application of reason.

But Reason, according to Sir William, has its limits. There are points at which we cannot get to the bottom of the rationale for a certain law. There we have to stand back and admire.

Prof. Daniel Boorstin in his well-known study of Blackstone's Commentaries (The Mysterious Science of the Law, Beacon Paperbound, Boston, 1958) advances the thesis that Blackstone, a clever conservative, was mainly seeking to check the aggressive advance of Dame Reason from across the Channel. Any revolutionary application of Reason to

the legal structure of the Establishment in England had to be resisted. And the best way to do so, for the Tory aristocrats, seemed to be to accept Reason in full and set limits to it in terms of a mystery of "Divine Law".

~~(b) The concept of a Divine Law is rather universal~~ seems to have existed in ancient times.

Even pre-Christian Jewish philosophy speculated on this point and came to the conclusion, widely accepted in the time of Christ, that the law (the Torah) was created "before the foundation of the world" - that in fact the two things created before the heavens and the earth were the Law and the Rock on Mt Moriah where the Temple-Altar in Jerusalem stood.

To start with one of the more ancient philosophies of the world, the Vedas of the Hindus, reflecting the tradition in at least 2000 B.C., if not a good deal earlier, reveal a highly developed concept of universal law.

In early Indian thought

The Sanskrit word for this universal law, Rta, already indicates a very dynamic understanding of it. Rta means harmonious flow or orderly movement. But Rta is more than a process - it is a power regulating and controlling all movements. Night and day follow each other according to Rta, the rivers flow, the rain descends, and the wheels of time go round and round according to the cosmic rhythm of Rta. Even the gods, who are defenders of the law, are themselves subject to it.

But this universal law is open to violation at the hands of evil spirits and human beings. And for ancient

Vedic man, the purpose of human law was both to help him continue in the path of this universal law, and to restore him as well as society into the path of rightness when they had transgressed the universal law.

This concept of universal law seems to occur in the records of Taoism and has influenced the Buddhist notion of Dharma as well as the Confucian concepts of ethics. One can trace the concept in Egypt and Sumeria as well.

Greek or Western philosophy follows essentially the same line. Solon of Athens was perhaps the first to apply it clearly in politics. The law is not dependent on any human covenant, according to Aeschylus. The Furies stand watch over the execution of the law, saying:

"Stern and fixed the law is: we have hands t'achieve it,
Cunning to devise.
Queens are we and mindful of our solemn vengeance
Not by tear nor by prayer
Shall a man avert it. (1)

In fact in the Greek framework Law is supreme, and even Zeus is mainly the chief guardian of law and cosmic order. Law regulated even the gods. Diké (not nomos which comes later) is the highest reality. Gods and men are alike subject to it. The Rule of Law is above the gods.

In Plato's Republic this concept of law and order is further worked out - resulting in a society of perfect

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(1) The Eumenides, 285 ff.

equilibrium, which thank God, never existed, and let us hope never will!

The origins of Roman law however are to be traced in the Stoic world of thought. All men, says Cicero, have received reason and law from nature, and the end of life is to heed the voice of our innate sense of law.(1) And "One eternal and unchanging law will be valid for all nations and all times, and there will be one master and ruler, that is, God, over us all, for he is the author of this law, its promulgator, and its enforcing judge".(2)

Here we see the Western concept of God and Government. God is a king of the Universe. The King does what God does universally, within the confines of his own state.

The Greeks had deified cosmic laws as the absolute. The Latins pragmatically developed law as a tool of empire. The jus divinum still crops up in the documents of the Vatican Council in the 20th century. The persistent presence of a concept of jus naturale in Western thought can be traced back to the Greek and Latin stoics. When the Greek city-states gave way to the Graeco-Roman empire, law had to be further universalized and absolutized. As the law became divinized, so did the person of the law-giver and law-executor, the Emperor.

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(1) Cicero, De Legibus I: 12

(2) Cicero, De Re Publica II:22

What was a dynamic concept in Greek Stoic thought ~~becomes stabilized~~ tends to become static in the Latin Roman Empire.

For the Greeks the conception of nature or *phusis* denoted something dynamic. There can be found in Aristotle the use of the term *phusis* to denote all that has come to be (from *phuein*, Skt *bhu* or *bhavami* and Latin *fui* = to come into being, to be born). But Aristotle's fundamental conception of *phusis* is as the principle of movement or change in all things by which they come into the fullness of their being.

The Greek Stoics also, following Aristotle gave the name *phusis* to the active principle in the Cosmos, not to the Cosmos itself. The Stoics did not hesitate to call Phusis God. But they were not pantheists. They would not call the Cosmos God. God the principle of movement inside the Cosmos, its *phusis* or *logos* is God, ~~or the logos~~. *Logos* is *phusis* the ruling principle in the cosmos. The Divine Logos or Phusis indwells the Cosmos, and is in all things as the principle and seed, imparting to each its character and leading it to fullness of growth. In the human being also the *phusis* is *logos* or reason.

The good life is life according to Logos, the divine principle of the Universe. But that divine Logos is present in Man as Reason.

So Reason is virtue – the only absolute good. All laws ultimately derive from this reason which indwells man as well as the Cosmos. The Sage is one who dwells "Consistently" and according to nature. The influence of this kind of thinking on the prevailing Roman Catholic teaching on Birth Control is at once obvious.

But not only in conservative Roman Catholic thinking. ~~Had~~ It is the most prevailing idea in the modern world. All laws, customs and institutions are to be subjected to examination in the light of reason, we insist today This would be fully upheld by the Stoics. Even our modern notion of choice of the ~~lesser~~ of two evils and the ethics of compromise can find an echo in Stoic thought. For them all ~~Good~~ contexts and all actions could be classified into "preferred" "deprecated", ~~and "abso~~ "suitable" and "absolutely indifferent" The "suitable" and the "preferred" were to be chosen by the Sage.

The Stoics were Cosmopolitans. The whole universe was one Society with Zeus, or Divine Reason as King. Only Gods and Sages were true citizens of the Cosmopolis, but all human beings, being endowed with reason, were potential citizens. ×

The most important expression of Stoic Cosmopolitanism was the Concept of Natural Law – the universal decrees of Divine Reason, Common to all men and to which all human law was to correspond. The law of the laity of the Cosmos was superior to all

[two [illegible] in Lucretius treatment of Stoic thought see

local tradition and law. This concept underlies the origin and development of Roman law, so influential even to our own day.

Augustine, that fountain head of Western thought, was not so enthusiastic about Roman law. The vaunted blessings of Roman law are according to him secured only by an infinite number of acts of injustice to individuals, by the torture of innocent witnesses and the condemning of the guiltless. True justice was not to be found in any earthly kingdom, but only in the City of God [x]. For Augustine universal law was not the foundation of the State, but rather the Common will of the people [x2] But yet he does not deny the existence of a lex aeterna [x3] The crucial difference between Augustine and Graeco Roman philosophy perhaps lies in the concept of the "will" The Universal law itself is not like a reed in things. It has its source in the will of God and has to be accepted by the will of man. There is a criterion for Universal law - the will of God. This will of God is revealed in the Scriptures. Reason can discover in its own depths what it learns from Scripture.

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[x] De Civitate Dei II : XX1.

[x2] " XIX : XXIV "A people is a multitude of reasonable creatures conjoined in a general agreement of those things it respects".

[x3] De Civ. Dei V : X1, also his early work De Ordine

Between Augustine and Aquinas St. Thomas there is a sharp contrast. For Augustine the State itself is a consequence of the Fall; if men were not sinful, they would be guided by ~~the law of~~ love, needing no laws. For St. Thomas, on the contrary, goes back to Aristotle and posits the need for regulation even in the innocent society.

"Man is by nature a social animal. Hence, in the state of innocence (if there had been no Fall) men would have lived in society. But a common social life of many individuals could not exist unless there were someone in control to attend to the Common Good." x1

"Every human law has the nature of law in so far as it is derived from the laws of nature. If in any case it is incompatible with the natural law, it will not be law, but a perversion of law." x2

But in Aquinas' thought ~~(unlike in that~~ the Church was the interpreter and Criterion of the Divine law, whereas for Sir William Blackstone English Common law was more or less the ~~substitute~~ touchstone of Divine law.

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x1 Summa Theol. Ia. 96, 4. quoted by F.C Copleston, Aquinas. Pelican, 1957

x2. Summa Theol Ia, IIae. 95. 2. quoted ibid.

~~But it~~ It is interesting to note in passing that ~~St~~ while St. Augustine conceives the intent of the State as mainly (the negative one of) maintaining law and order, or restraining evil, for St. Thomas the function of the State ~~is more~~ is positive — namely the promotion of the Common Good. The Law-and-Order State versus the Welfare State debate has a rather ancient ancestry.

~~Hobbes~~

We will have ~~further occasion~~ to examine Thomas Aquinas' thought in greater detail.

We should ~~have now~~ ~~stop for a~~ after a cursory discussion of the question of "Natural Law", as this seems to be of particular importance to jurists.

~~The most~~ One important distinction between for us to keep in mind is the Concept of nature as understood by the ancients (particularly the Stoics) and ~~exist~~ and by Rousseau and the Romanticists. The Romanticist is anxious to slip out of the rational ~~phrase~~ frame of mind into (literal or poetic) identification with nature in the sense of trees and rivers, rocks and animals. The ancients thought of nature as an ordered whole, and were by no means against reason. In fact they identified reason and nature. The Romantic finds them in conflict with each other. But it's hardly ~~not~~ the same 'nature' that they are talking about.

II Law and Order - Nomos and Logos

The Concept of Natural Law

The Oxford Dictionary of the Christian Church defines Natural Law thus:

"In a theological Context, the law inherent in the nature of rational creatures whereby they duly order their conduct with respect to God, their neighbour and themselves"

The Dictionary goes on to say that "the chief N.T. text on which the Christian teaching on the subject rests is Romans 2:14ff". It is worth quoting the Dictionary article in full:

"St. Paul affirms that 'when Gentiles ..... Philosophers"

(see page 10a)

Obviously the subject is controversial. The current trend in Protestant theology seems to be to deny the existence of either natural law or natural theology. The Traditionalist denial of Natural Law which arose in the 19th century France and Belgium and found articulation at Louvain, was Condemned by the last Vatican Council in 1870. So Natural Law still remains a fundamental Concept in official Catholic thought, as it comes up in the schemata of the 2nd Vatican council. Even in secular legal thought its influence is considerable and legal philosophers seem to need this concept as a foundation for Law, unless they belong completely to the new

St. Paul affirms that "when Gentiles, which have no law, do by nature the things of the law, these, having no law, are a law to themselves; in that they shew the work of the law written in their hearts, their conscience bearing witness therewith". This law, being perceived by the light of reason, is a matter of obligation for every human being who enjoys the use of his rational faculties. The universal claim of the Natural Law has been defended philosophically on the ground that men everywhere and at all times have acknowledged some moral code, however imperfect, resting on the fundamental principle that good is to be done and evil avoided. The Commandments of the Decalogue, except that of the sanctification of the Sabbath, all belong to the Natural Law. The fact that the Natural Law can be known by unaided human reason was denied, e.g. by Traditionalism; its dependence on God as the author of nature is denied by Rationalism; and its very existence by many modern philosophers.

Main Theme: Law in a Revolutionary Age

Reflections on The Mystery of Laws.

"The Mysterious Science of the Law"* is the title of Daniel Boorstin's famous essay on Sir William Blackstone's "Commentaries on the Laws of England"* Blackstone's Commentaries, I was brought told understand, is perhaps the most influential single book in the history of Anglo-Saxon Common law.

Professor despite the title, does not want Yet Daniel Boorstin, intention is not to say that Law is a mysterious science. On the Contrary. As a luminary in Boorstin = of Harvard and Chicago law schools in our century, he could hardly remain at the top of his profession in America if he did. Rather his attempt appears to be to show that Blackstone an 18th century upper-class Tory lawyer, wanted to bolster the existing order status quo of his time by setting limits to the threatened by the frightening advance of reason from across the Channel. The laws, according to Blackstone, had two sources - nature and revelation. The ascribing to law provided the legal institution of his time with a mysterious aura of sanctity since their reasonability could only partially be partial. Many laws were good.

¶ Blackstone wrote at a time when science and religion, or reason faith and reason and faith were in supposedly mortal combat with each other. Intelligent Tories Rivers decided that to look for the death of reason would be wishful thinking. It was wiser to use reason as an ally than to fight it: Newtonian physics had become too popular for even Tory pow

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1 Daniel J. Boorstin, Beacon Paperbound, ~~1958~~ Boston, 1958

2. Popular American Edition, Ed by Thomas M. Cooley, Chicago 1871. (First Published 1765-69)

to dare defy Science and reason.

While some could use rational thought to bolster up the existing order of society and Church, others were using reason to undermine the stability of that society by questioning its pet assumptions. And the Common Law was the frame and bulwark of that order. Any attack on law by reason was dangerous, as said Blackstone to society's conservative ears; yet if law could not claim to be a rational science as well, it would lose its prestige in society.

So Blackstone's exhortation to a prospective lawyer "to lay the foundations of his future labours in a solid scientifical method". He sets out to apply the maxim "Cessante ratione, cessat et ipsa lex", where reason ends, the law also ends with it. He looked for and "discovered" the "rational principles" that underlay British common law. That sounds thoroughgoing enough.

But for Blackstone the science of laws was necessary but not sufficient. For After all if reason was the criterion of law, then every man's reason would become a law unto himself. Human law depends, according to Blackstone, on the law of nature and the law of Revelation. God's laws were perfect. They were only imperfectly reflected in nature, and the human reason, on account of original sin, was an imperfect instrument for the discovery of this Divine law.

The Science of law was also therefore imperfect and had to be supplemented by a Mystery of law. The Common law, as it had developed through the mysterious Genius of our forefathers, was not always to be explained fully in rational terms. ~~understood clearly~~ On occasion, we could only stand back and admire, without seeking to understand completely.

For Blackstone, the study of law was really a study of 'man in general'. And he compared legal systems of various countries to find the "principles" common to all. There was a "nature" in which all these principles found a source. And Blackstone was clear in his definition of natural law:

> As man depends absolutely upon his Maker for everything, it is necessary that he should, in all points, conform to his Maker's will. This will of the Maker is called the law of nature. For as God, when he created matter, and endued it with a principle of mobility, established certain rules for the perpetual direction of that motion, so, when he created man, and endued him with free will to conduct himself in all parts of life, he laid down certain immutable laws of human nature, whereby that freewill is in some degree regulated and restrained, and gave him also the faculty of reason to discover the purport of those laws." X

St. Paul affirms that "when Gentiles, which have no law, do by nature the things of the law, these, having no law, are a law to themselves; in that they shew the work of the law written in their hearts, their conscience bearing witness therewith". This law, being perceived by the light of reason, is a matter of obligation for every human being who enjoys the use of his rational faculties. The universal claim of the Natural Law has been defended philosophically on the ground that men everywhere and at all times have acknowledged some moral code, however imperfect, resting on the fundamental principle that good is to be done and evil avoided. The Commandments of the Decalogue, except that of the sanctification of the Sabbath, all belong to the Natural Law. The fact that the Natural Law can be known by unaided human reason was denied, e.g. by Traditionalism; its dependence on God as the author of nature is denied by Rationalism; and its very existence by many modern philosophers.

(c) What is Law? Let us begin by making certain groupings of "laws".

(i) Law in the Physical Sciences. Even here the concept is changing. The law of gravity, e.g. is no longer seen as an inviolable statute of God, but rather as a hypothesis put forward by man which helps us to relate a great deal of our sense-data to each other and thus to make "sense" of it. We will not deal with this concept of law in our reflections here. ~~&~~ The laws here deal with areas where no freedom appears present, and therefore can afford to be exact

(ii) Laws of the Social Sciences. Less precise than the above, yet they are attempts to understand and to predict, but cannot be exact because of the presence of human freedom.

(iii) The laws governing special societies. The Statutes of a corporation, ~~and so on.~~ the Canon law of a Church and so on.

(iv) Civil, ~~+~~criminal ~~and~~ or common laws. Roman~~s~~-Dutch law, Anglo-Saxon law and so on.

(v) The law - Ha-Torah as a Biblical concept.

Our concern in this consultation is with item iv. But we can hardly do it without reference to some of the others.

Are there universal laws governing human conduct? Are there ethical absolutes to which our statutory laws are related? If so, how do we find them? What are the tests by which we can recognize them as universal?

Law in a Revolutionary Age.
Reflections on the Main Theme.

Outline of Four Meditations.

Introduction. As in theology, the untrained layman is often encouraged to make his own contributions to the subject, perhaps one who has no formal acquaintance with law as a discipline may be excused for daring to speak on the subject of law to such a distinguished group of lawyers. One speaks always subject to correction, and certainly not from trained competence.

I Three Philosophical Questions on the Nature of Law

(a) Is law a science?
(b) What is the basis of obligation in law?
(c) How is law related to freedom?

(a) Is law a science?

Sir Basil Blackstone's Commentaries on the Laws of England, an influential text-book in the history of Anglo-Saxon Law, says quite plainly that law is rational

Before we discuss the question of whether law is a "science" or a "mystery" or something else, we need to make precise what we mean by law. We need to exclude law as a term used in the physical sciences, e.g. "law of gravity" "Second law of thermodynamics", etc., which are working hypotheses helpful to man to recognise the relationship between various phenomena in the physical world. We should also, perhaps for this first discussion here, exclude the Canon laws of the Church, though these may very well come in at certain points later on in our discussion. What we mean by Law is, in this particular meditation at least, to take Pound's definition, "Social Control through the systematic application of the force of politically organized society" We may have to expand this definition later on.

If we take law in this restricted sense, is it a science? Of course Jurisprudence has become a discipline in the Universities, but usually in the Law School, which is Arts but not in the Science Faculty. That proves or disproves nothing. What we are really asking is Is law something which we can discover by rational enquiry? Or is it revealed does it originate in some historical revelation? Roman law, with its Stoic background claims no revelation as its foundation. Jewish theocratic law does. But in both cases, the concept of law goes back to

~~divine origin~~ law is connected with ultimate reality. For the children of Israel, the ten Commandments were written by the finger of God and given to Moses. For the Stoic, human law was an expression of the Divine Logos which indwells, regulates and harmonizes the Cosmos.

Even for Sir Basil Blackstone in the 18th century, it was science, but more than science. "The mysterious science of ~~the Divine~~ Law" is the title of Daniel Boorstin's acute study of Blackstone's Commentaries.

~~In Western thought,~~ early

A cursory examination of human reflection on law indicates that without exception ancient man thought of law - as related to the ultimate nature of human existence. Even in modern times the difficulty remains. ~~Jurists~~ Philosophers of law seem unable to find a final foundation for law as such. In fact all profound human reflection is oriented towards the question of regulating and improving the way of life of mankind, which is the ultimate objective of law.

We shall therefore leave the question Is law - discovered by reason or revealed by God unanswered until later.

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Law in a Revolutionary Age

Four Meditations.

I What is Law — Science or Mystery? The Sources and Criteria of Law. The Functions of Law.

II a) "Law and Order" — Nomos and Logos

(b) ~~Law and Freedom~~ The Concepts Natural Law.

(c) ~~Law and Love~~ Ps. 19.

III Law ~~as~~ a Revolutionary Force

"From his right hand went forth a Fiery Law for them". Deut 33:2

IV. The Law of Love — Law and Freedom.

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III Law ~~as~~ a Revolutionary Force

"From his right hand went forth a Fiery Law for them". Deut 33:2

IV. The Law of Love — Law and Freedom.

For us Blackstone raises the main questions — What is law? What are its criteria? Is there 'a natural law' from which all human laws are to be derived? Has God laid down certain "immutable laws of human nature?" Is the function of law "to regulate and restrain" human freedom? What is the relationship of law to order, freedom and revolution?

Let us begin with the question of what is Law? No doubt there exists some confusion in the minds of all of us on this point. We talk about physical laws, the law of gravity, the second law of thermodynamics and various other laws of physics. There are the laws of the "exact" sciences also mathematics, chemistry, biology and so on. We also have Common law, Roman-dutch law, Anglo-Saxon law and so on. Then finally we have the Biblical use of the expression ha-torah or ho-nomos which is translated as the law in English. We must not forget that in this course at least we are concerned with law ~~in so far~~ as a corpus of statutes laid down for the regulation of the common life of a national community. Yet the laws of Jurisprudence can hardly be understood except in relation to ~~the~~ and in distinction from the other concepts of law.

Law as an Instrument of Social Change

The Evangelical writings of the New Testament — as well as the Spirit of the Gospel have often been construed as somehow standing in opposition to the Gospel. "For by the works of the law shall no flesh be vindicated in the presence of God. For by the law is the recognition of sin" (Romans 3:20). "You have died to the law, my brethren, through the body of Christ..." (Rom 7:4) "You are severed from Christ, you who would be justified by the law. You have fallen away from Grace" (Gal 5:4)

St. Paul's strong language against the law has perhaps played a small part in the current estrangement between the lawyer and the Church. All sorts of attempts have been made to bring the law and the Gospel together. by e.g. "The law of Christ - the law of love" etc

Two clarifications are in order here. Terminologically, when St. Paul uses the words "works" and "law", the context is he has a special connotational world In St. John's Gospel the Jews ask Jesus on the Seashore of Tiberias the popular question: "What should we do in order to work the works of God?" Any O.T. Rabbi would have answered "Obey the Torah" The works of the Law were the works of God. And they had been very carefully worked out — the 613 Commandments of the Mishnah. This is what

St. Paul has in mind when he mercilessly ~~attacks~~ opposes law with the Gospel — and works with Grace.

But the "works of the law" as a basis for authentic human existence, are inadequate for St. Paul for fundamental human reasons as well. Works as a basis for justification leads to the bargaining spirit of relationship with God. But ~~Law stunts the growth of man at certain points~~. There is something wrong, not merely with the Law as developed in Pharisaism, but in fact with Law as such. One of the wiser Rabbis had said that the Law was a fence ~~To trans~~ Law circumscribes an area within which conduct can be safe and not harmful. To transgress the law would be to fall into the ditch. But fences are usually good for ~~Cattle~~ Cattle and sheep, who would not know when to go once they are outside the fence. For man Law can stunt his growth and keep him from going out and becoming what he ought to be. The law-abiding citizen is not necessarily the best citizen, even if he may be a respectable citizen.

This was recognized even in the O.T. Certain laws were definitely meant to take man out of the fence. The law of conduct towards the stranger. The law of the Sabbath year when all outstanding debts were to be written off. In the N.T. this ~~educat~~ element of the law is further brought out, especially

the Sermon on the Mount.

Law of reconciliation with your accuser before the sacrifice is offered (Mt 5:24). Showing the left cheek to the one who slaps you on the right. (5:38 ff.) Not for a perfect society. No one slaps you on your right cheek in a perfect society.

But when men are themselves made into a law, then the stoning begins. This is the tension between law and the Spirit. The letter of the law kills. The Spirit gives life. Law is only a provisional expression of the Spirit, which when it becomes an idol can destroy society rather than preserving it.

A concept like <u>natural law</u> can become contrary to and confining the Spirit. The Cosmic Law presupposes that the seed of man contains all the possibilities predetermined. The Concept of a Standard. The Roman balance - Tsedek. Tsedakah. Conformity to a standard.

But the Standard is eschatological - not natural. The Standard is given - but not defined. God. His own righteousness. Freedom. Wisdom and love.

and of both to Love

The relationship ~~between~~ Law ~~and~~ to Power, is something that needs to be examined in our last meditation.

To recapitulate some common assumptions. Power is not evil. ~~Absolute~~ Power corrupts. Absolute power or naked power corrupts absolutely. Therefore power needs to be controlled by law.

A ~~very~~ rather significant book on this question has recently come out from a South African Professor of Political Science, Edgar Brookes, entitled Power, Law, Right and Love. I would probably not have seen the book in my normal course of work, had not the Duke University Press sent me a complementary copy. That, of course is no measure of its significance. He makes two simple assertions which form the ~~basis~~ basis for the first third of the book

1. Power to be tolerable needs to be controlled by law
2. Law, if it is to control power, must not rest on the will of those in power, but on fundamental principles of justice acceptable to the human heart at its best.

But power is such a vague term. Tillich considers power as one of the three Cardinal concepts of man's cognitive encounter with the ~~world~~ environment. His little but rich book "Love, Power + Justice" ought to engage our attention. We speak of ~~also~~ the power of electricity, thermal power, or power-fields. Surely that is not

the original meaning of the word 'power'. It is a sociological term transferred to the physical sciences, but its use in physics for example helps us to understand its fundamental meaning - the ability to control or move something else. Even a river or a dam has power in this way. Human power, however, is the power of a person or group of persons to control and move other persons and things according to the will of the former.

Tillich attempts a more historical + ontological analysis of power, ~~and I shall attempt to sketch the main outline here. But~~ He begins with Nietzsche, who described authentic life as "will-to-power". But for Nietzsche, the will-to-power lies not so much in the simple desire to control others, but in the heightened affirmation + realization of self. In other words, for Nietzsche being is power, by which a self establishes itself overcoming internal and external resistance + not necessarily power over others/beings. But if being is power, then what is it power over? Tillich answers the question by saying - over non-being. The Heideggerian background of Tillich's answer seems obvious. Non-being cannot be an entity (being) existing outside the realm of being, but - as Sartre would say, something that oozes out of being. Non-being lurks inside being. Finite being is being-towards-death, or being that bears non-being in its bosom. It is being that has a beginning and and end, therefore a being limited between non-being before and non-being after.

But there is in all being a powe

to resist non-being, however limited that power to resist may be. The instinct to self-preservation is recognized even by law, and mitigates the heinousness of a crime.

For Tillich Being is the Power of Being. And the Power of Being in any given being is its power to resist, or counter-act internal and external negation. Ultimate power is the power to overcome non-being ultimately.

Power becomes manifest only in actualization, vis-a-vis other bearers of power, in the conscious and unconscious decisions that occur in encounter with other powers and the realization of these decisions.

We know that this is a rather apt description of the realm of International relations where the power struggles have not yet been decisively structured, and law is still in the process of formulation. But something of this power encounter should have taken place during the period of evolution of nations and tribes. The encounter of being with being or power with power is still an ongoing process in many new nations, as well as in the older ones. Obviously the most significant power-encounters are in the realm of group relations.

But group power requires organization or centring. Individual power also requires proper co-ordination and control of one's various powers, in order to attain maximum efficiency

The man of power is always a disciplined man. The group ~~that has~~ or nation that has efficient power, requires, in addition to power, the ~~effective~~ effective organization and centralization of that power, ~~in order~~ That is why in a democratic State like the U.S.A. the ~~decision to make~~ power to make the most powerful decisions about nuclear war has to be centralized in a single person, the President But ~~that centre is~~ the central figure of the President is chosen in the hope that he will act responsibly for the whole nation. If he uses his power to make the citizens of his country dance to his tunes, then he is no longer acting as the centre of the group for ~~but rather as not as the~~ aff its self-affirmation, but for his own individual and personal self-affirmation. Ultimately however, he will destroy himself with his people, or perish by himself.

Responsible Government, in the present imperfectly developed stage of our political thinking, means the government which helps the nation to affirm its being, rather than one which uses the power given to it by the nation to negate the being of that nation. Law is the regulative principle by which the centring or co-ordinating of the self-affirming powers of a nation is accomplished.

But law by itself does not co-ordinate or control the nation until it is applied or enforced The manifestation of the law is in

its enforcement. But force itself is applied power. Thus the ability to control and regulate the power-structure of the nation itself requires power. How will the power of the person or group who applies power to control ~~the~~ and direct the power-structure of a nation itself be controlled? Checks and balances are built into the structure of so-called free democratic nations, while in the Communist countries, the nation itself cannot check the manner in which the Party exercises its power, the checks and balances have to be built into the structure of the Party itself.

But the efficiency of Power calls for intense centring, which seems to be more a characteristic of authoritarian societies rather than democratic societies. The Communist argument is that authoritarianism is necessary only so long as the masses remain ignorant of their own best interests, and are therefore prone to act against those interests. When the masses have been properly educated, then the enforcement of law and the power of the State will no longer be necessary. The State will wither away, and so will law with it.

This utopianism has biblical origin. In the time of Christ, one of the more frequent theological debates among Rabbis used to be what the Messiah will do when he came. Will he re-establish the authority of the Davidic throne and by force of law and administration see to it

that the law of Moses would be strictly observed Or will be fulfill Jeremiah's promise? " I will put my law within them, and I will write it upon their hearts; ".

The Sermon on the Mount is in effect an answer to this question. " I have come not to abolish the law, but to fulfill it". The point is the internalization of the law. Man becomes mature only when he can refrain from adultery not because the law forbids it, not even because he knows it to be ethically wrong, but because he has become the kind of person for whom it is not a need or a temptation. In the case of murder, most of us have become free from the law. It is possible that many of us may not commit murder even if there were no law against it. The law against murder or slavery has been to a certain extent at least internalized.

This process is part of the growth of man. But it is not to be expected that this will happen spontaneously. Man must be educated to live without the fence. Fulfilling the Law is more than doing what the law requires, but as St. Paul says, reaching the level of maturity where the Law is not experienced as a fact at all. Lawyers have a duty to work themselves out of a job

Love is not, however, opposed to power or law.
Love's strange work of Compulsion. Martin Luther.
accusation ~~put~~ that it leads to Machiavellianism.

Power, Force, compulsion, Violence. (destruction of property and life)

Economic Power. One world.

No righteousness in unrighteous structure. Law should structure society for movement towards its goals.

The Purpose of God. Humanity as one reflecting God's Love, Power + Wisdom. This is the Image of God. an aufgabe not a gabe.

Chinese Law.

Chinese have always believed in a universal cosmic order existing in the physical universe as well as in the hearts of man.

Man's misconduct disrupts the universal order. In winter if you wear thin clothes, or thick ones in summer, you are not just hurting yourself. You are disrupting the order of the universe

The good sovereign keeps the balance. The bad one upsets the universe

Early Confucian thought does not start with written laws and enforcement, but laws intuitively known, and taught, mostly by example, by the sovereign himself as head of the big "family". Custom and rites preserve the laws and disseminate them.

This was opposed by the Fa Chia, or the Law

Law in a Revolutionary Age

The Concept of Natural Law

(Paul Verghese)

"Natural Law" is a term used in so many different senses and put to different uses in varying cultures. Some see it as the basis of positive law. Others see the positive law as primary and natural law to be appealed to only in questions for which there is no legal provision.

Grotius invoked it for building an International law. The Conservative can appeal to it for his purposes as Sir William Blackstone did But the revolutionary reformers of 17th and 18th century France and England appealed to it as well as a basis for their radical demands. The debates of the Constituent Assembly in France were full of references to Natural Law.

The distinction between a jus divinum and a jus naturale does not remain constant. Nor does the difference between either + the jus Gentium. A Roebuck's concept of universal law, combining both these elements seems to occur in nearly all ancient cultures which has left us any record.

Law
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schools of philosophy like Logical Analysis or ~~Existentialism~~ world which rule out fundamental questions in favour of pragmatic ones.

Philosophically the question of nature is receiving new attention. Particular attention should be drawn to the study coming from the Vienna Circle of Philosophers: Moritz Schlick, Philosophy of Nature (Philosophical Library, New York, 1949) and the new historical study by R. G. Collingwood: The Concept of Nature. ( )

In theology, the World Council's Faith and Order Secretariat is beginning to take a keen interest in this question. The forthcoming meeting in Denmark of the Faith and Order Commission has as its main theme: "Physis or the Concept of Nature". The problem here seems to be a double one: (a) the significant nuances of the Greek concept physis and the Latin concept "natura"; and (b) the separation between the 'natural' and the 'supernatural'.

The origins of the concept 'physis' go back to the pre-Socratics in Western thought. The root verb is phuō, parallel to the Sanskrit bhu or bhavami and Latin fui, meaning in the active to bring forth, to produce, to put forth, and in the passive to grow, to come into being, to be born, to occur. Physis could thus mean birth or origin, and derivatively that with which one is born. Natura is also from Latin nascor = to be born

The derivative meaning has been developed in a long course of variations in thought. Parmenides wrote a treatise Peri Phuseōs, kata phusin nomos ho panton basileus.* Aristotle, in his understanding of all things as form and substance already paved the way for the Concept of phusis as a comprehensive term for all that exists or has come to be. Physike, in the science that deals with this, Aristotle's Conception of nature as the principle of movement or change within all things has come to new brilliance in Teilhard de Chardin's Conception of the Cosmos as matter moved by Consciousness.

The Stoics, following Aristotle, gave the name Nature or Physis only to the active principle in the Cosmos, not to the Cosmos itself. Nature was God for the Stoics, immanent in the Cosmos. All things were indwelt by the "logoi spermatikoi" the seminal logoi, which were seeds of the divine fire leading all things to growth according their 'natural' form. For the Stoic, logos was phusis, the ruling principle in each individual existence, parallel to Aristotle's 'form'. In the human being the phusis is logos or reason. In the universe, as a whole, the logos endiathetos, the Divine Fire, indwells and regulates its movements.

Stoic ethics is closely related to this Stoic understanding of the universe. The rational soul of man is part of the one great Divine Logos which directs the Universe, and therefor it is man's responsibility to live in absolute conformity with this ruling principle in him. Reason is Virtue, and is the

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* Pind. Frag. 151. Cf. Plato Rep. 444 D

Theodosius II, the Younger. (401-450). Was emperor from 408. Codex Theodosianus was a compilation of Byzantine laws.

Code of Justinian. 482-565. Macedonian. Ygorle Educated at Constantinople. St Sophia - & Code of Justin